

Short Title: GSC Licensing Boards and Comm'ns/Rule Crimes.

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE PROVISIONS THAT BROADLY CRIMINALIZE VIOLATIONS
OF RULES OF CERTAIN LICENSING BOARDS AND COMMISSIONS AND TO MAKE
TECHNICAL AMENDMENTS IN THE SURROUNDING LANGUAGE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-166 reads as rewritten:

"§ 53-166. Scope of Article; evasions; penalties; loans in violation of Article void.

(a) Scope. – No person shall engage in the business of lending in amounts of fifteen thousand dollars (\$15,000) or less and contract for, exact, or receive, directly or indirectly, on or in connection with any such loan, any charges whether for interest, compensation, consideration, or expense, or any other purpose whatsoever, which in the aggregate are greater than permitted by Chapter 24 of the General Statutes, except as provided in and authorized by this Article, and without first having obtained a license from the Commissioner. The word "lending" as used in this section, ~~shall include,~~ includes, but ~~shall not be~~ is not limited to, endorsing or otherwise securing loans or contracts for the repayment of loans.

(b) Evasions. – ~~The provisions of subsection~~ Subsection (a) of this section ~~apply~~ applies to any person ~~who~~ that seeks to avoid its application by any device, subterfuge, or pretense whatsoever. Devices, subterfuges, and pretenses include any transaction in which a cash rebate or other advance of funds is offered and all of the following apply:

- (1) The cash advance is made contemporaneously with the transaction or soon thereafter.
- (2) The amount of the cash advance is required to be repaid at a later date.
- (3) The selling or providing of any item, service, or commodity with the transaction is incidental to, or a pretext for, the advance of funds.

(c) Penalties; Commissioner to Provide and Testify as to Facts in ~~His~~ the Commissioner's Possession. – Any person not exempt from this Article, or any officer, agent, employee, or representative thereof, ~~who that~~ fails to comply with or ~~who that~~ otherwise violates any of the provisions of this ~~Article, or any regulation of the Banking Commission adopted pursuant to this Article, shall be~~ Article is guilty of a Class 1 misdemeanor. Each violation shall be considered a separate offense. ~~It is the duty of the~~ The Commissioner of Banks ~~to shall~~ provide the district attorney of the court having jurisdiction of any offense under this subsection with all facts and evidence in the Commissioner's actual or constructive ~~possession, possession~~ possession and ~~to shall~~ testify as to these facts upon the trial of any person for the offense.

(d) Additional Penalties. – Any contract of loan, the making or collecting of which violates any provision of this Article, or ~~regulation~~ rule thereunder, except as a result of accidental or bona fide error of computation is void, and the licensee or any other party in violation shall not collect, receive, or retain any principal or charges whatsoever with respect to the loan. If an affiliate operating in the same office or subsidiary operating in the same office of a licensee makes a loan in violation of G.S. 53-180(i), the affiliate or subsidiary may recover only its principal on the loan."

SECTION 2. G.S. 65-71 reads as rewritten:

"§ 65-71. Penalties.

(a) Except as provided in this subsection, a person violating any provisions of this ~~Article, of any order or rule promulgated under this Article, or of any license issued by the Commission~~ Article is guilty of a Class 1 misdemeanor. Each failure to deposit funds in a trust fund in accordance with this Article is a separate offense. A person ~~who that~~ has failed to deposit funds in a trust fund in accordance with this Article and whose delinquent deposits equal or exceed twenty thousand dollars (\$20,000) is guilty of a Class I felony.

(b) The officers and directors or persons occupying similar status or performing similar functions of any cemetery company, cemetery sales organization, cemetery management ~~organization~~ organization, or cemetery broker, as defined in this Chapter, failing to make required contributions to the care and maintenance trust fund and any other trust fund or escrow account ~~shall be~~ are liable for any offense based on the failure and upon conviction for the offense shall be punished in the manner prescribed by law."

[Staff Note: The General Statutes Commission flagged the issue of deleting language that criminalizes a violation of any order of the Cemetery Commission. Please see subsection (a).]

SECTION 3. G.S. 74C-17 reads as rewritten:

"§ 74C-17. Enforcement.

(a) The Board ~~is authorized to~~ may apply in its own name to any judge of the superior court of the General Court of Justice for an injunction in order to prevent any violation or threatened violation of the provisions of this Chapter.

(b) Any person, firm, association, or corporation or their agents and employees violating any of the provisions of this Chapter ~~or knowingly violating any rule promulgated to implement this Chapter shall be~~ is guilty of a Class 1 misdemeanor. The Attorney General, or ~~his~~ the Attorney General's representative, ~~shall have~~ has concurrent jurisdiction with the district attorneys of this State to prosecute violations of this Chapter.

(c) In lieu of revocation or suspension of a license or permit under G.S. 74C-12, a civil penalty of not more than two thousand dollars (\$2,000) may be assessed by the Board against any person or business ~~who~~ that violates any provision of this Chapter or any rule of the Board adopted pursuant to this Chapter. In determining the amount of any penalty, the Board shall consider the degree and extent of harm caused by the violation. The clear proceeds of civil penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(d) Proceedings for the assessment of civil penalties under this section ~~shall be~~ are governed by Chapter 150B of the General Statutes. If the person assessed a civil penalty fails to pay the penalty to the Board, the Board may institute an action in the superior court of the county in which the person resides or has ~~his~~ the person's principal place of business to recover the unpaid amount of the penalty. An action to recover a civil penalty under this section shall not relieve any party from any other penalty prescribed by law."

[Staff Note: The General Statutes Commission flagged the issue of possibly deleting language that allows a licensing board or commission to assess a civil penalty for any violation of its rules. Please see subsection (c).]

SECTION 4. G.S. 74D-11 reads as rewritten:

"§ 74D-11. Enforcement.

(a) The Board ~~is authorized to~~ may apply in its own name to any judge of the Superior Court of the General Court of Justice for an injunction in order to prevent any violation or threatened violation of the provisions of this Chapter.

(b) Any person, firm, association, corporation, or department or division of a firm, ~~association~~ association, or ~~corporation~~ corporation or their agents and employees violating any of the provisions of this Chapter ~~or knowingly violating any rule promulgated to implement this Chapter shall be~~ is guilty of a Class 1 misdemeanor. The Attorney General, or ~~his~~ the Attorney General's representative, ~~shall have~~ has concurrent jurisdiction with the district attorneys of this State to prosecute violations of this Chapter.

(c) The regulation of alarm systems businesses ~~shall be~~ is exclusive to the Board; however, any city or county shall be permitted to require an alarm systems business operating within its jurisdiction to register and to supply information regarding its ~~license~~ license and may adopt an ordinance to require users of alarm systems to obtain revocable permits when alarm usage involves automatic signal transmission to a law-enforcement agency.

(d) In lieu of revocation of suspension of a license or registration under G.S. 74D-10, a civil penalty of not more than two thousand dollars (\$2,000) may be assessed by the Board against any person ~~who~~that violates any provision of this ~~Chapter, Chapter~~ or any rule of the Board adopted pursuant to this Chapter. In determining the amount of any penalty, the Board shall consider the degree and extent of harm caused by the violation. The clear proceeds of all penalties collected under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(e) Proceedings for the assessment of civil penalties ~~shall be~~are governed by Chapter 150B of the General Statutes. If the person assessed a penalty fails to pay the penalty to the Board, the Board may institute an action in the superior court of the county in which the person resides or has ~~his~~the person's principal place of business to recover the unpaid amount of the penalty. An action to recover a civil penalty under this section shall not relieve any party from any other penalty prescribed by law.

(f) The sale, installation, or service of an alarm system by an unlicensed or unregistered person ~~shall constitute~~constitutes a threat to the public safety, and any contract for the sale, installation, or service of an alarm system ~~shall be deemed~~is void and unenforceable."

[Staff Note: The General Statutes Commission flagged the issue of possibly deleting language that allows a licensing board or commission to assess a civil penalty for any violation of its rules. Please see subsection (d).]

SECTION 5. G.S. 87-48 reads as rewritten:

"§ 87-48. Penalty for violation of Article; powers of Board to enjoin violation.

(a) Any person, partnership, ~~firm~~firm, or corporation ~~who shall violate~~that violates any of the provisions of this Article or ~~any rule of the Board adopted pursuant to this Article or who shall engage or offer~~that engages or offers to engage in the business of installing, maintaining, ~~altering~~altering, or repairing within ~~the State of~~ North Carolina any electric wiring, devices,

~~appliances~~ appliances, or equipment without first having obtained a license under the provisions of this Article ~~shall be~~ is guilty of a Class 2 misdemeanor.

(b) Whenever it ~~shall appear~~ appears to the State Board of Examiners of Electrical Contractors that any person, partnership, ~~firm~~ firm, or corporation has violated, is violating, or threatens to violate any provisions of this Article, the Board may apply to the courts of the State for a restraining order and injunction to restrain ~~such~~ these practices. If upon ~~such~~ the application the court finds that any provision of this Article is being violated, or a violation thereof is threatened, the court shall issue an order restraining and enjoining ~~such~~ the violations, and ~~such~~ the relief may be granted regardless of whether criminal prosecution is instituted under the provisions of this Article. The venue for actions brought under this subsection ~~shall be~~ is the superior court of any county in which ~~such~~ the acts are alleged to have been committed or in the county where the defendants in ~~such~~ the action reside."

[Staff Note: The General Statutes Commission flagged the technical corrections made by this section. The Commission also flagged the issue of possibly deleting language that allows a licensing board or commission to assess a civil penalty for any violation of its rules. Please see subsection G.S. 87-47(a3), which provides, in part:

"In addition to administering a penalty under subsection (a2) of this section, the Board may assess a civil penalty of not more than one thousand dollars (\$1,000) against a licensee or a qualified individual who has engaged in an activity prohibited under subsection (a1) of this section or has violated another provision of this Article or a rule adopted by the Board. The clear proceeds of civil penalties collected under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."]

SECTION 6. G.S. 90-48 reads as rewritten:

"§ 90-48. Rules ~~and regulations of Board; violation a misdemeanor.~~ of Board.

The North Carolina State Board of Dental Examiners ~~shall be and is hereby~~ is vested, as an agency of the State, with full power and authority to enact adopt rules and regulations governing the practice of dentistry within the State, ~~provided such so long as the rules and regulations are~~ not inconsistent with the provisions of this Article. ~~Such rules and regulations shall become effective 30 days after passage, and the same Rules may be proven, as evidence, by the president and/or or the secretary-treasurer of the Board, and/or Board or~~ by certified copy under the hand

and official seal of the secretary-treasurer. A certified copy of any rule ~~or regulation~~ shall be receivable in all courts as prima facie evidence thereof if otherwise ~~competent, and any person, firm, or corporation violating any such rule, regulation, or bylaw shall be guilty of a Class 2 misdemeanor, and each day that this section is violated shall be considered a separate offense.~~ competent.

The Board shall issue every two years to each licensed dentist a compilation or supplement of the Dental Practice Act and the Board ~~rules and regulations,~~ rules, and upon written request ~~therefor by such a~~ licensed dentist, a directory of dentists."

[Staff Note: The highlighted phrase appears to be obsolete in light of G.S. 150B-21.3 (Effective date of rules).]

SECTION 7.(a) G.S. 90-121.1 reads as rewritten:

"§ 90-121.1. Board may enjoin illegal practices.

In view of the fact that the illegal practice of optometry imminently endangers the public health and ~~welfare,~~ welfare and is a public nuisance, the North Carolina State Board of Examiners in Optometry may, if it ~~shall find~~ finds that any person is violating any of the provisions of this Article, apply to the superior court for a temporary or permanent restraining order or injunction to restrain ~~such the~~ person from continuing ~~such the~~ illegal practices. If upon ~~such the~~ application, ~~it shall appear to the court~~ determines that ~~such the~~ person has violated, or is violating, the provisions of this Article, the court shall issue an order restraining any further ~~violating thereof.~~ violation. All ~~such~~ actions under this section by the Board for injunctive relief ~~shall be~~ are governed by the provisions of Article 37 of Chapter 1 of the General Statutes: ~~provided, such injunctive relief may be granted regardless of whether criminal prosecution has been or may be instituted under the provisions of G.S. 90-124. Statutes.~~ Actions under this section shall be commenced in the superior court district or set of districts as defined in G.S. 7A-41.1 in which the respondent resides or has ~~his~~ the respondent's principal place of business."

[Staff Note: Section 7(a) is new to this draft and contains a conforming change to Section 7(b).]

SECTION 7.(b) G.S. 90-124 reads as rewritten:

"§ 90-124. ~~Rules and regulations of Board; violation a misdemeanor. of Board.~~

Rules ~~and regulations~~ adopted by the Board ~~shall become effective 30 days after passage, and~~
~~the same~~ may be proven, as evidence, by the president ~~and/or or~~ the secretary-treasurer of the
~~Board, and/or Board or~~ by certified copy under the hand and seal of the secretary-treasurer. A
certified copy of any rule ~~or regulation~~ shall be receivable in all courts as prima facie evidence
thereof if otherwise competent, ~~and any person, firm, or corporation violating any such rule or~~
~~regulation shall be guilty of a Class 2 misdemeanor, and each day that this section is violated~~
~~shall be considered a separate offense. competent.~~

The Board shall issue every two years to each licensed optometrist a compilation or
supplement of the Optometric Practice Act and the Board ~~Rules and Regulations, rules,~~ and upon
written request by ~~such a~~ licensed optometrist, a directory of optometrists."

[Staff Note: The highlighted phrase appears to be obsolete in light of G.S. 150B-21.3 (Effective date of rules).]

SECTION 8. G.S. 90-288 reads as rewritten:

"§ 90-288. Misdemeanor.

It ~~shall be is~~ unlawful and ~~constitute~~ constitutes a Class 1 ~~misdemeanor, misdemeanor for a~~
person to do any of the following:

- (1) ~~For any person to act~~ Act or serve in the capacity as, or hold ~~himself oneself~~
out to be, a nursing home administrator, or use any title, sign, or other
indication that ~~he the person~~ is a nursing home administrator, unless ~~he the~~
person is the holder of a valid license as a nursing home administrator, issued
in accordance with the provisions of this ~~Article, and Article.~~
- (2) ~~For any person to violate~~ Violate any of the provisions of this ~~Article or any~~
~~rules and regulations issued pursuant thereto. Article."~~

SECTION 9. G.S. 90A-66 reads as rewritten:

"§ 90A-66. Violations; penalty; injunction.

Any person violating any of the provisions of this Article ~~or of the rules and regulations adopted by the Board shall be~~ is guilty of a Class 1 misdemeanor. The Board may appear in its own name in the superior courts in an action for injunctive relief to prevent violation of this Article and the superior courts ~~shall~~ have power to grant ~~such~~ injunctions regardless of whether criminal prosecution has been or may be instituted as a result of ~~such~~ violations. Actions under this section shall be commenced in the superior court district or set of districts as defined in G.S. 7A-41.1 in which the respondent resides or has ~~his~~ the respondent's principal place of business or in which the alleged acts occurred."

SECTION 10. G.S. 131E-81 reads as rewritten:

"§ 131E-81. Penalties.

(a) Any person establishing, conducting, managing, or operating any hospital without a license ~~shall be~~ is guilty of a Class 3 misdemeanor, and upon conviction ~~shall only be~~ is only liable for a fine of not more than fifty dollars (\$50.00) for the first offense and not more than five hundred dollars (\$500.00) for each subsequent offense. Each day of a continuing violation after conviction shall be considered a separate offense.

(b) Except as otherwise provided in this Part, any person ~~who that~~ willfully violates any provision of this ~~Part or who Part,~~ willfully fails to perform any act ~~required,~~ required by this Part, or ~~who~~ willfully performs any act prohibited by this ~~Part, shall be~~ Part is guilty of a Class 1 misdemeanor. ~~However, any person who willfully violates any rule adopted by the Commission under this Part or who willfully fails to perform any act required by, or who willfully does any act prohibited by, these rules shall be guilty of a Class 3 misdemeanor."~~

SECTION 11. G.S. 131E-109 reads as rewritten:

"§ 131E-109. Penalties.

(a) Any person establishing, conducting, ~~managing-managing,~~ or operating any nursing home without a license ~~shall be~~ is guilty of a Class 3 misdemeanor, and upon conviction ~~shall only be~~ is only liable for a fine of not more than five hundred dollars (\$500.00) for the first offense and not more than five hundred dollars (\$500.00) for each subsequent offense. Each day of a continuing violation after conviction shall be considered a separate offense.

(b) Any person acting under the authority of the Department ~~who~~ that gives advance notice to an operator of a nursing home of the date or time that the nursing home is to be inspected ~~shall be~~ is guilty of a Class 3 misdemeanor. The inspection of a nursing home for initial licensure ~~shall be~~ is exempt from the prohibition of prior notice. All subsequent inspections ~~must~~ shall comply with ~~the provisions of~~ this subsection.

(c) The Secretary or a designee of the Secretary may suspend the admission of any new patients or residents at any nursing home or domiciliary home where the conditions of the nursing home or domiciliary home are detrimental to the health or safety of the patient or resident. This suspension shall remain in effect until the Secretary is satisfied that conditions or circumstances merit the removal of the suspension. This subsection ~~shall be~~ is in addition to authority to suspend or revoke the license of the home. Any facility wishing to contest a suspension of admissions ~~shall be~~ is entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. The petition for a contested case shall be filed in the Office of Administrative Hearings within 20 days after the Department mails a written notice of suspension of admissions to the facility.

(d) Except as otherwise provided in this Part, any person ~~who~~ that violates any provision of this ~~Part or who~~ Part, willfully fails to perform any act ~~required,~~ required by this Part, or ~~who~~ willfully performs any act prohibited by this ~~Part,~~ Part ~~shall be~~ is guilty of a Class 1 ~~misdemeanor.~~ Provided, however, that any person who willfully violates any rule adopted by the Commission

~~under this Part or who willfully fails to perform any act required by, or who willfully performs~~
~~any act prohibited by, these rules shall be guilty of a Class 3 misdemeanor.~~ misdemeanor.

(e) The clear proceeds of civil penalties provided for in this section shall be remitted to
the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 12. This act becomes effective December 1, 2021, and applies to offenses
committed on or after that date. Prosecutions for offenses committed before the effective date of
this act are not abated or affected by this act, and the statutes that would be applicable but for
this act remain applicable to those prosecutions.